IN THE COURT OF APPEALS OF THE STATE OF ALASKA

GREGORY WILLIAMS,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-11169
Trial Court No. 4FA-11-819 CR

MEMORANDUM OPINION

No. 6213 — July 29, 2015

Appeal from the Superior Court, Fourth Judicial District, Fairbanks, Randy M. Olsen, Judge.

Appearances: Jane B. Martinez, under contract with the Public Defender Agency, (opening brief and reply brief), Renee McFarland, Assistant Public Defender, (supplemental brief), and Quinlan Steiner, Public Defender, Anchorage, for the Appellant. David Buettner, Assistant District Attorney, Fairbanks, and Michael C. Geraghty, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, Allard, Judge, and Hanley, District Court Judge.[*]

Judge HANLEY, writing for the Court.
Chief Judge MANNHEIMER, concurring.

[*] Sitting by assignment made pursuant to Article IV, Section 16 of the Alaska Constitution and Administrative Rule 24(d).

A jury convicted Gregory Williams of failure to stop at the direction of a peace officer in the first degree.[1] On appeal, Williams contends that the State presented insufficient evidence to support the conviction. We affirm.

Facts and proceedings

"When a defendant claims that the evidence is insufficient to support a criminal conviction, we must view the evidence (and all reasonable inferences to be drawn from that evidence) in the light most favorable to upholding the verdict."[2] The facts of Williams' case are therefore presented in that light.

Shortly after 3:00 a.m. on March 9, 2011, Fairbanks Police Officer Kevin Mepsted was on patrol when he observed a vehicle fail to stop at a stop sign. The officer initiated a traffic stop, and the vehicle stopped. Mepsted approached the vehicle with Officer Girtha Wells, who was in the patrol car with Mepsted. Mepsted contacted Williams, who was the driver and sole occupant of the vehicle, and asked him for his driver's license, registration, and proof of insurance. In response, Williams put the vehicle into gear and sped away, causing the tires of his vehicle to spin and spray gravel into the face of Wells. Wells' face stung from the gravel striking her, and she checked her face several times to determine if she was bleeding, which she was not.

The officers returned to their car and pursued Williams, who drove through an area of Fairbanks where industrial buildings are located. The speed limit in this area was thirty miles per hour, and Williams drove at a speed of approximately thirty to forty miles per hour and crossed the center line of the street several times, swerving from lane to lane. He then drove through a trailer park containing numerous homes and cars that

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[1] AS 28.35.182(a)(1).

[2] *Richards v. State*, 249 P.3d 303, 304-05 (Alaska App. 2011).

were parked in driveways and on the side of the street. Williams drove through the trailer park several times at about twenty to thirty miles per hour on streets that were covered with snow and ice, at times driving in the opposite lane of travel. The speed limit in the trailer park was twenty miles per hour. An officer who had joined the pursuit deployed spike strips in front of Williams. He drove over the strips but his tires did not deflate. No pedestrians or moving vehicles were on the roads of the trailer park or industrial area when Williams drove through those areas.

Williams then drove onto the Richardson highway, which was covered in "black ice" in some areas. The speed limit on the highway was fifty-five miles per hour, and Williams reached speeds in excess of seventy-five miles per hour. Several officers who pursued Williams testified that he was driving too fast for the road conditions. As Williams and the pursuing officers approached an intersection, three other cars had to pull to the side of the road. Mepsted testified that if they had not done so, there was a good possibility that they would have been struck by Williams' vehicle. The traffic light was red at another intersection and Williams drove through it, without attempting to stop, at approximately forty to fifty miles per hour. Except for patrol vehicles, no vehicles were present at the intersection.

After Williams drove into the parking lot of a business, Mepsted blocked his vehicle with his patrol car and officers arrested Williams. The pursuit lasted approximately thirty minutes and covered about fifteen to twenty miles of roadway.

The State charged Williams with failing to stop at the direction of a peace officer in the first degree[3] and driving with a revoked license.[4] A jury found Williams

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[3] AS 28.35.182(a)(1).

[4] AS 28.15.291.

guilty of both offenses. He appeals his conviction for failing to stop at the direction of a peace officer.

The State presented sufficient evidence to support Williams' conviction for first-degree failure to stop at the direction of a peace officer

Williams contends on appeal that his conviction should be reversed because the State presented insufficient evidence to support the charge of first-degree failure to stop at the direction of a peace officer. When evaluating whether the evidence was sufficient to support a verdict, "the test is whether, viewing the evidence (and the inferences to be drawn from that evidence) in the light most favorable to upholding the verdict, fair-minded people could conclude that the State had proved [the] elements [of its case]."[5]

To convict Williams of first-degree failure to stop at the direction of a peace officer, the State was required to prove that Williams, while driving a motor vehicle, "knowingly fail[ed] to stop as soon as practical and in a reasonably safe manner under the circumstances when requested or signaled to do so by a peace officer"[6] and that he also violated the reckless driving statute set forth in AS 28.35.400.[7] Alaska Statute 28.35.400 provides, in relevant part, that "[a] person who drives a motor vehicle in the state in a manner that creates a substantial and unjustifiable risk of harm to a person or to property is guilty of reckless driving." This risk is defined by the statute as "a risk of such a nature and degree that the conscious disregard of it or a failure to perceive it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation."

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[5] *Hoekzema v. State*, 193 P.3d 765, 767 (Alaska App. 2008).

[6] AS 28.35.182(b).

[7] AS 28.35.182(a)(1).

Williams argues that he did not create a substantial risk of harm to a person or property because he maintained control of his vehicle, no pedestrians were in the vicinity of his vehicle, and he did not come close to colliding with any vehicles or buildings.

Williams contends that because he initially complied with the officer's direction to stop, his act of eluding the officer did not begin until he drove away from the officer and the officer again directed him to stop. Under this theory, the evidence that Williams sprayed gravel into the face of one of the officers could not be used to prove that he was driving recklessly while eluding the officers because they had not yet signaled him to stop a second time.

The State argues that the law required Williams to stop and *remain stopped* until the officer had accomplished the purpose of the traffic stop, including determining whether Williams had a valid license, registration, and insurance. Using this approach, the act of Williams spraying gravel onto the officer could be used to prove that he created a substantial and unjustifiable risk of harm to the officer, and thus drove recklessly.

When interpreting a statute, the court's role is to ascertain the legislature's intent and then to construe the statute so as to implement that intent.[8] Courts are to interpret statutes "according to reason, practicality, and common sense, considering the meaning of the statute's language, its legislative history, and its purpose."[9]

A review of the legislative history of AS 28.35.182 does not reveal a discussion of the factual scenario presented in this case, where a driver momentarily stops for an officer but then flees. However, the purpose of a typical traffic stop is to

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[8] *Y.J. v. State*, 130 P.3d 954, 959 (Alaska App. 2006).

[9] *ARCTEC Servs. v. Cummings*, 295 P.3d 916, 920 (Alaska 2013) (original citation omitted).

allow an officer to enforce traffic laws.[10] This purpose is frustrated if a driver initially stops for an officer but drives away before the officer can gather the information needed to enforce the law and potentially issue the driver a citation. We therefore interpret the statute to require the motorist to remain stopped. To conclude otherwise would allow a driver to stop for an officer and, when the officer walks up to the vehicle, drive away, potentially multiple times. It would also enable a driver to gain a tactical advantage by speeding away after the officer has stepped out of the patrol car.

We conclude that AS 28.35.182, which makes it a crime for a driver to knowingly fail to stop when signaled to do so by an officer, requires the driver to remain stopped until the traffic stop is complete. Therefore, because Williams did not remain stopped for the officer, evidence that Williams sprayed gravel into the face of one of the officers can be used to support the State's charge that he committed reckless driving after failing to stop.

In addition to actually harming the officer with gravel, Williams drove over the speed limit through a residential area, where the streets were covered with snow and ice, at times driving in the opposing lane of travel. He then drove on the Richardson Highway, which was icy in some areas and where the speed limit was fifty-five miles per hour. He drove seventy-five miles per hour at times, which was well above the speed limit, and he forced three cars to pull off of the highway to avoid a collision.

When this evidence is viewed in the light most favorable to upholding the verdict, fair-minded jurors could conclude that Williams failed to stop for the officer and that he committed reckless driving while failing to stop. Thus, the evidence was sufficient to support Williams' conviction for first-degree failing to stop at the direction of a peace officer.

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[10] *See McCollum v. State*, 808 P.2d 268, 269-70 (Alaska App. 1991).

Williams also contends that, in the context of first-degree failure to stop at the direction of a peace officer, reckless driving does not encompass acts of driving that only endanger the person who is eluding the police, or the police officers who are giving chase.

This case potentially raises this issue as a challenge to what evidence the jury should have been allowed to consider, and whether the trial court properly instructed the jury regarding this evidence. However, Williams' claim on appeal is that the evidence that was presented to the jury was insufficient to support his conviction for failing to stop at the direction of a peace officer — not that the trial court failed to limit the scope of the evidence that was admitted. Therefore, we do not decide this issue in this appeal.

Conclusion

The judgment of the superior court is AFFIRMED.

Judge MANNHEIMER, concurring.

I write separately to clarify the last issue addressed in the lead opinion.

Williams asserts that, as a matter of law, the jurors should not have been allowed to consider some of the aspects of his dangerous driving — to wit, the actions that endangered only himself or the police officers who were chasing him — when the jurors deliberated on whether Williams drove recklessly during his act of failing to stop.

But rather than attacking the jury instructions for failing to inform the jurors of this purported limitation, Williams argues that the evidence at his trial was insufficient to support the jury's verdict. He reasons that (1) the jurors should not have been allowed to rely on Williams's actions that endangered only himself or the officers, and that (2) if the trial evidence is stripped of those actions, the remaining evidence is insufficient to support the conclusion that Williams drove recklessly during his act of failing to stop.

As a matter of law, this is not an "insufficiency of the evidence" argument.

If we assume that Williams is correct about the legal limitation on the evidence, then the jury instructions would be flawed for failure to include this limitation, and the trial judge conceivably committed error by allowing the State to introduce and rely on this evidence. But flaws in the jury instructions and flaws in the evidentiary rulings at trial do not entitle a defendant to dismissal of the charges with prejudice. Rather, these flaws entitle a defendant to a new trial. See my concurring opinion *Morris v. State*, 334 P.3d 1244, 1249-1250 (Alaska App. 2014), and the discussion of this point in *Collins v. State*, 977 P.2d 741, 748, 751-52 (Alaska App. 1999).

Defendants are, of course, free to argue that some of the evidence presented at their trial should not have been admitted, or that the jurors should have been instructed not to use this evidence for particular purposes. But defendants are not allowed to *then*

argue that the remaining evidence was legally insufficient to support the jury's verdict (thus attempting to invoke the double jeopardy clause to prevent any retrial).